IN THE

Supreme Court Of The United States

OCTOBER TERM, 1978

No. 78-333

Charles Thomas Griffin, ... *Petitioner*

V.

United States of America, ... *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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STATUTES

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner, Charles Thomas Griffin, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this case on June 29, 1978.

OPINION BELOW

The opinion of the Court of Appeals in this cause has not yet appeared in the official Federal Reports, but a copy thereof is appended hereto as Appendix 1.

JURISDICTION

The jurisdiction of this Court is invoked because of various prejudicial errors in denying motions of the

Petitioner and admitting prejudicial evidence over his objections. The judgment sought to be reviewed was entered on June 29, 1978. The Petition for Rehearing was denied on July 28, 1978, a copy of the order denying same being appended hereto as Appendix 2. Title 28 USCA 1254(1) confers upon this Court the jurisdiction to review the judgment in question by Writ of Certiorari.

QUESTIONS PRESENTED FOR REVIEW

1. Whether Count II of the Indictment was Fatally Defective.

2. Whether Count V of the Indictment Should Have Been Dismissed on Motion.

3. Whether Admitting Proof of Repurchase of 2,880 Acres Was Error.

4. Whether Admitting Proof of Similar Transactions Was Error.

5. Whether Denial of *Brady* Material Was Error.

6. Whether Statement of Co-Conspirator Chambers Was Inadmissible Against Petitioner, Charles Thomas Griffin.

STATUTES INVOLVED

The Statutes involved in this case are 18 USCA 2, 18 USCA 371, 18 USCA 1006, and 18 USCA 1014, verbatim copies of which are set forth in Appendix 3 hereto.

STATEMENT

1. The Court of Appeals for the Eighth Circuit in the instant case made decisions in conflict with the decisions of another Court of Appeals on the same matter, decided federal questions in a way in conflict with applicable decisions of the Supreme Court, and departed from the accepted and usual course of judicial proceedings so far as to call for an exercise of this Court's power of supervision.

2. On July 7, 1977, Petitioner was found guilty by a jury in the United States District Court for the Eastern District of Arkansas, Western Division, on Count I, which charged that he, as president and a member of the executive committee of Lonoke Production Credit Association, Joe Henry Chambers as vice-president of the Association, and Bill Hansell as a branch office manager of the Association, with intent to defraud the Association, conspired to participate, share in and directly and indirectly receive monies, profits and benefits from a purported crop loan of the Association to Harold V. Huntsman, the proceeds of which, in part, would be used to purchase 2,880 acres from O. M. Young, Trustee for said defendants; on Count II, which

charged that Petitioner, being president of the Association, with intent to defraud the Association received $71,000.00 by means of and through the disbursement by said Association of its check in the amount $386,600.00 payable to Harold V. Huntsman and Maudie Huntsman dated July 24, 1974, purportedly representing proceeds of a crop loan to the Huntsmans; and on Count V, which charged that he, Joe Henry Chambers and Bill Hansell caused to be made a false statement in an application for a loan submitted by Harold V. Huntsman and Maudie Huntsman to the Lonoke Production Credit Association for the purpose of influencing the action of the Association to approve the loan in that said defendants caused to be stated and represented in said application that request was being made for a crop loan in the amount of $513,800.00, when the defendants knew that $292,319.18 was to be used to pruchase 2,880 acres of real property. The Indictment appears as Exhibit 4 in the Appendix.

3. Count II simply routinely tracked the statute, failed to set forth the manner or means employed by Petitioner in receiving the money, and consequently was defective. Count V should have been dismissed upon motion of Petitioner because defendant, Bill Hansell, took and filled out the application for the loan (Vol. VIII p. 67) which Huntsman certified was for a "crop loan" and that all statements made therein were true and correct and made for the purpose of inducing the Association to grant the loan (Govt. Ex. 7). Further, Huntsman testified that he had never had a conversation with Petitioner (Vol. IV — p. 54), and the application

was approved routinely without discussion among the members of the Executive Committee of the Association (Vol. I — p. 405). The trial court permitted the Government to introduce evidence on Count II that the defendants had repurchased the 2,880 acres from Huntsman after the termination of the alleged conspiracy which evidence was adduced through 15 witnesses, 29 exhibits and five large charts with accompanying handouts. This evidence should have been excluded entirely. It was not admissible, according to the trial court (Vol. VI — p. 44), on Counts I and V, but limited to Count II.

4. A limiting instruction was insufficient to prevent prejudice to the Petitioner on Counts I and V. Also, the trial court abused its discretion in admitting evidence of two two-part allegedly similar transactions by means of nine witnesses, 50 exhibits and five charts over a period of two out of the seven days consumed by the Government of the trial period, when such transactions did not include the essential physical elements of the offense for which Petitioner was on trial, and the prejudice resulting from such action substantially outweighed the probative value. Further, within the time permitted after indictment, Petitioner filed, among other Motions, a Motion that he be furnished all evidence favorable to him. During the course of the trial, it was discovered that the minute book of the Association in the possession of the acting president of the Association (Vol. VI — p. 130), which had been reviewed by an investigator for the

Government (Vol. VI — p. 137) who reported his findings to another investigator (Vol. VI — p. 138), contained an account of a joint meeting at the offices of the Association on July 26, 1976, conducted by T. R. McGuire, President of the Federal Intermediate Credit Bank, of Lonoke Production Credit Association directors and personnel, Farm Credit Administration personnel, Federal Intermediate Credit Bank personnel, and the Deputy Governor of the Farm Credit Administration in Washington, D. C., at which Mr. McGuire explained that a Farm Credit Administration investigation team had discovered that violations of FCA rules and regulations had apparently been committed and that the employment of Petitioner and Bill Hansell had been terminated, but "he was direct, emphatic and explicit that criminal violations were not involved." This evidence was exculpatory and should have been furnished to Petitioner by the Government. Lastly, the Government was permitted to introduce the excised written statements of the defendants over objection. If there was a conspiracy, it had terminated well before the statements were given. The statements set forth acts of concealment of the alleged crime and were clearly inadmissible as to Count I; but the trial judge did not so instruct the jury and stated that "once a person makes a statement to a law enforcement officer about a case, it can be used against him for all purposes and all counts he is charged with" (Vol. V — p. 152). Moreover, although recognizing that the statements of the Petitioner and co-defendants were not admissible against each other (Vol. V -- p. 127), the trial judge failed to instruct the jury that the statement of defendant, Joe Henry

Chambers was admissible only against him. The admission of the statement of defendant Chambers was highly prejudicial to the Petitioner because since defendant Chambers did not take the stand, no opportunity was afforded Petitioner to cross-examine him with reference to it.

5. On July 15, 1977, the District Court entered a judgment commiting Petitioner to the custody of the Attorney General for imprisonment for 15 months concurrent on Counts I, II and V and assessing a fine of $10,000.00 on Count I and $5,000.00 each on Counts II and V, to stand committed. This judgment and sentence were affirmed by the Court of Appeals for the Eighth Circuit on June 29, 1978, and the mandate to the Clerk of the District Court was stayed on July 28, 1978. The Petitioner is presently on bond.

ARGUMENT

1. No crime was charged by Count II. All that is charged is that Petitioner, with intent to defraud the Association, received $71,000.00 through the disbursement by the Association of a check in a larger amount. It is not stated that Harold V. Huntsman and Maudie Huntsman were not entitled to the check issued to them nor that the "crop loan" was not in fact a "crop loan". The crucial words are "with intent to defraud" the Association, but nowhere is Petitioner informed by the Count fully, directly and expressly without any uncertainty how he intended to defraud the Association. The means by which the offense was committed are not

alleged. In *United States v. Britton*, 107 U.S. 655, 27 L.Ed. 520, the Court in considering an indictment said, "there must be averments to show how the application was made and that it was an unlawful one." Later, in *Hamling v. United States*, 418 U.S. 87, 41 L.Ed. (2) 590, the Supreme Court stated that an indictment must contain the elements of the offense charged. In *United States v. Brown*, (C. A. 8) 540 F. (2) 364, an indictment under 18 USCA 1951 approved by the Court set forth the time, identified the victims, described the property extorted, the methods of extortion and the nature of the commerce affected, and therefore contained "in factual terms the elements of the offense sought to be charged." The Court of Appeals in this case failed to address itself to this important assignment, simply outlined the well recognized elements which are required to be established to prove a violation of 18 USCA 1006, and stated, "The record in our present case clearly reflects that the defendants were fully aware of the charges against them."

It has consistently been held in the Eighth Circuit that a person under indictment is presumed innocent and that he has no knowledge of the facts charged against him. *Miller v. United States*, (C. A. 8) 133 F. 337; *Fontana v. United States*, (C. A. 8) 262 F. 283; *Lynch v. United States*, (C. A. 8) 10 F. (2) 947; *Partson v. United States*, (C. A. 8) 20 F. (2) 127; and very recently in *United States v. Camp*, (C. A. 8) 541 F. (2) 737, which was reversed because the indictment did not reach the standard of *Hamling v. United States, supra*, that the "words of themselves fully, directly, and expressly,

without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense ..."

Based upon the decisions of the Supreme Court and the Eighth Circuit, Count II should have been dismissed. The fact that the record clearly "reflects that the defendants were fully aware of the charges against them" is not sufficient.

2. Count V should have been dismissed upon motion. It charged that Petitioner caused to be made a false statement in an application for a loan submitted by Harold V. Huntsman and Maudie Huntsman to Lonoke Production Credit Association for the purpose of influencing the action of the Association to approve the loan by causing to be stated in the application that request was being made by the Huntsmans for a crop loan when in fact a portion of the loan proceeds was to be used to purchase land.

To support a conviction, there must exist some affirmative participation which at least encourages the perpetrator. *United States v. Thomas*, (C.A. 8) 469 F. (2) 145; *United States v. Crow Dog*, (C.A. 8) 532 F. (2) 1182. If the evidence is insufficient to exclude a reasonable hypothesis of the innocence of the Petitioner, the case must be reversed. *United States v. Black*, (C. A. 5) 497 F. (2) 1039.

The application for the loan was taken and filled out by the defendant, Bill Hansell (Vol. VIII — p. 67). The application, on which appeared the certification by

Huntsman that the purpose of the loan was "crop loan" and that all statements therein contained were true, was approved routinely by the members of the Executive Committee of the Association (Vol. I — p. 405), and Huntsman testified that he had never had a conversation with Petitioner (Vol. IV — p. 54). It is impossible to see how Petitioner caused Huntsman to make a false application. Not only is there no substantial evidence to support the charge, there is *no* evidence to support it.

The words "crop loan" are not words of art. The meaning of the words was ambiguous. The Government maintained the words meant that the proceeds would be used exclusively in planting and harvesting a crop, while Petitioner by overwhelming testimony of borrowers from the Association testified without equivocation that the words "crop loan" appearing on the application meant that the money could be used to buy land (Vol. IX — p. 132, 137, 140, 157). Judgment of acquittal should have been entered as to Petitioner on Count V because the Government had the burden, which it did not meet, of negating the claim that Petitioner did not know the falsity of the words "crop loan" in the application. *United States v. Steinhilber*, (C. A. 8) 484 F. (2) 386; *United States v. Jones*, (C. A. 8) 545 F. (2) 1112.

The Eighth Circuit in reversing *United States v. Kelton*, (C. A. 8) 446 F. (2) 669, stated the general rule which it failed to follow in the instant case. It said:

> "...where the government's evidence is equally strong to infer innocence of the crime charged as

it is to infer guilt, the verdict must be one of not guilty and the court has a duty to direct an acquittal."

3. Admitting evidence as to Count II concerning concealment or the repurchase of the 2,880 acres by the defendants was error and a clear abuse of discretion on the part of the trial judge. This evidence came principally from Jimmy Boggess, who was granted immunity and not indicted, but had given a statement to the Government which paralleled and corroborated the statements of the defendants. The only purpose for calling Boggess as a witness was for him to repudiate his statement and thereby demonstrate: (1) Boggess' statement was similar to those of the defendants, (2) Boggess lied, (3) the defendants lied, and (4) the defendants told Boggess to lie. The statement of Boggess was introduced, and the testimony of Boggess that such statement was false impeached the statement of Petitioner, who did not testify; and, of course, Boggess' testimony was highly prejudicial.

The statement of Boggess relating to the repurchase of the land was not limited to Count II as erroneously stated by the Eighth Circuit. Neither was it material and relevant on the issue of knowledge and intent with respect to that Count. Actually, it had no bearing whatever on the allegations contained in the Count. And, of course, it was not admissible as to Counts I and V. The impact of admitting the statement of Boggess was to permit the Government to do indirectly that which it could not do directly, and the Eighth Circuit should have reversed on this issue.

4. Contrary to the opinion of the Eighth Circuit, the trial court did abuse his discretion in admitting the evidence pertaining to alleged similar transactions. In *United States v. Broadway*, (C. A. 5) 477 F. (2) 991, the Court reversed a conviction of a defendant at whose trial the district judge erroneously admitted evidence of related offenses even though limiting its use for the purpose of showing intent and guilty knowledge, because the related offenses did not include the essential physical elements of the offense charged. *United States v. San Martin*, (C. A. 5) 505 F. (2) 918, and *United States v. Beechum*, (C. A. 5) 555 F. (2) 487, were also reversed upon the reasoning set forth in *Broadway, supra*. In none of the alleged similar transactions in the case at bar was there a participation by Hansell or the contention that a false application was filed with the Association, or the claim that the purchase of land was prerequisite to the granting of a loan. Since there was a complete lack of the required essential physical elements between the Huntsman transaction and the asserted similar transactions which were admitted at the request of the Government over the objections of Petitioner, we insist that prejudicial error was committed.

The Eighth Circuit, in *United States v. Maestas*, (C. A. 8) 554 F. (2) 834, in Note 4 at page 837, stated that a relevant consideration under Rule 404 (b) is the amount of time and evidence required during trial to develop the evidence of other criminal activity and referred to its decision in *United States v. Clemons*, (C. A. 8) 503 F. (2) 486, where in reversing, it held that the evidence of similar transactions so overshadowed the

principal case that it very likely confused the jury and unduly prejudiced the defendant. Of course, the jury was confused in the instant case, because the evidence of the alleged similar transactions far overshadowed the principal case. The Government was permitted in proving alleged like transactions to present nine witnesses, 50 exhibits out of a total of 115 exhibits, five large demonstrative charts, and five handouts over a period of two days out of its total of seven days of trial time. The prejudice from admitting the evidence of the purported similar transactions far outweighed its probative value. A review of the record will result in this impressive disclosure.

5. A joint meeting of Lonoke Production Credit Association directors and personnel, Farm Credit Administration personnel and Federal Intermediate Credit Bank personnel was conducted by T. R. McGuire, President of the Federal Intermediate Credit Bank, at Lonoke, Arkansas, on July 26, 1976. Also present were the Deputy Governor of the Farm Credit Administration in Washington, and Patrick Morehart, another officer of that organization (Vol. VI — p. 126). This meeting was held and that portion of the minutes quoted by the Eighth Circuit entered subsequent to the taking of the statements by the investigators from the respective defendants (Vol. V — p. 164, 168, 182).

Even if these minutes themselves were not admissible, if they had been provided to the defendants prior to trial, the defendants could have explored the background and basis for the announcement by Mr.

McGuire that no criminal violations were committed by the defendants, and the defendants could have presented to the jury the information so discovered as well as subpoenaing Mr. McGuire to testify.

These minutes were contained in the bound minute book of the Association, within the knowledge and control of the acting president of the Association (Vol. VI — p. 130), and were reviewed by Rodman H. Whitman, an investigator for the Government (Vol. VI — p. 137), who reported his findings to John Hickey, another investigator (Vol. VI — p. 138).

The Supreme Court, in *Brady v. Maryland*, 373 U. S. 83, 10 L.Ed. (2) 215, said:

> "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

Our system of the administration of justice suffers when an accused is treated unfairly. Petitioner was treated unfairly when these minutes were not disclosed upon his request, and justice consequently was not done him.

6. The trial court failed to follow the decision in *Bruton v. United States*, 391 U.S. 123, 20 L.Ed. (2) 476 and as a result, Petitioner was deprived of his Sixth Amendment right of cross-examination. This is one of

the most glaring and prejudicial errors which occurred during the trial. We now proceed to discuss the similarity of *Bruton* with the instant case.

During a joint trial of Evans and Bruton on a federal charge of armed postal robbery, at which Evans did not testify, a postal inspector testified to Evans' oral confession that Evans and Bruton had committed the robbery. The trial judge instructed the jury that although Evans' confession was competent evidence against Evans, it was inadmissible hearsay against Bruton and must be disregarded in determining Bruton's guilt or innocence. Both were convicted. The United States Court of Appeals for the Eighth Circuit affirmed Bruton's conviction because of the trial court's limiting instructions. On certiorari to review the affirmance, the Supreme Court reversed. In an opinion by Mr. Justice Brennan, expressing the views of five members of the Court, it was held that since Evans did not testify, the introduction of his confession added substantial weight to the Government's case in a form not subject to cross-examination, thereby violating Bruton's Sixth Amendment right of cross-examination, and that this encroachment on Bruton's constitutional right could not be avoided by a jury instruction to disregard the confession as to Bruton. Mr. Justice Stewart, joining in the opinion, stated that certain kinds of hearsay are so damaging, so suspect and so difficult to discount that jurors cannot be trusted to give such evidence the minimal weight it logically deserves, whatever the trial court's instructions.

Each of the defendants in the instant case, as well as Jimmy Boggess, gave statements (Govt. Ex. 64, 66, 68 and 69) to the investigating officers subsequent to the conclusion of the alleged conspiracy. All of the statements were similar in language and import. Boggess testified that his statement was false, and Hansell who took the stand did likewise. Chambers did not take the stand, and yet his statement, which was devastating to Petitioner, was admitted for all purposes (Vol. V—p. 152). The trial court did not limit the statement made by Chambers to him, although he stated in chambers that a statement made by an individual defendant could be offered against him only (Vol V—p. 127). Even had there been a limiting instruction on defendant Chambers' statement, it would have been insufficient under the Sixth Amendment to cure the prejudicial effect. The trial judge attempted to excise from the statements of defendants Hansell and Chambers any reference to Petitioner, but those statements as excised, when considered with the unexcised statement of Boggess and the excised statement of Petitioner, were so prejudicial that no instruction of the trial judge could eradicate the prejudice and, a fortiori, no instruction was given.

Further, a statement made or any act occurring after the conclusion of the conspiracy is not admissible against Petitioner or any of the other defendants on Count I. *Grunewald v. United States*, 353 U.S. 391, 1 L.Ed. (2) 931. Also, the statement of Chambers is inadmissible hearsay insofar as Petitioner is concerned, because such statement was given after the conspiracy had ended. *Krulewitch v. United States*, 336 U.S. 440

93 L.Ed. 790; *Lutwak v. United States*, 344 U.S. 604, 97 L.Ed. 593.

CONCLUSION

The trial was replete with errors. Count II of the indictment was fatally defective and could not be cured with knowledge possessed by Petitioner. Count V should have been dismissed because it was ambiguous, and there was no proof that Petitioner participated in the crime sought to be charged. The trial court committed prejudicial error in not limiting evidence of the repurchase of the subject land by Petitioner to Count II and permitting Boggess, who had been granted immunity, to impeach, in testifying concerning the repurchase, the statement of Petitioner who did not testify. The trial court abused his discretion in permitting the introduction of the mass of evidence concerning similar transactions which outweighed their probative value under Rule 404 (b). Also, error was committed in the denial upon request of all evidence favorable to the accused and in the admission of the statement of co-conspirator Chambers without limiting the same by proper instructions at the time.

For the reasons set forth, it is respectfully submitted that this Petition for Writ of Certiorari to review the judgment of the Court of Appeals for the Eighth Circuit be granted.

Respectfully submitted,

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Attorney for Petitioner

APPENDIX 1

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 77-1597 and No. 77-1601

United States of America,	*	
	*	
Appellee,	*	
	*	
V.	*	
	*	Appeals from the
Charles Thomas Griffin and	*	United States District
Joe Henry Chambers,		Court for the Eastern
	*	District of Arkansas.
	*	
Appellants.	*	

Submitted: March 14, 1978

Filed: June 29, 1978

Before VAN OOSTERHOUT, Senior Circuit Judge, HENLEY, Circuit Judge, and LARSON, Senior District Judge.*

VAN OOSTERHOUT, Senior Circuit Judge.

*The Honorable Earl R. Larson, Senior United States District Judge, District of Minnesota, sitting by designation.

On November 1, 1976, the federal grand jury returned a five-count indictment against Charles Thomas Griffin, Joe Henry Chambers and Bill Hansell. Not guilty pleas were entered. Upon a joint trial to a jury, commencing on June 20, 1977, defendant Griffin was found guilty on Counts I, II and V. Defendant Chambers was found guilty on Counts I and III and not Guilty on Count V.[1]

Griffin and Chambers have each filed a timely appeal from their conviction. The defendants were jointly tried below and their cases are consolidated upon this appeal. Each defendant has filed separate briefs. Hansell has not appealed from his conviction.

Count I alleges a conspiracy on the part of the defendants to violate 18 U.S.C. §1006. Count II charges Griffin with violation of 18 U.S.C. §1006. Count III charges Chambers with violation of 18 U.S.C. §1006. Count IV involves a charge against Hansell not here material. Count V charges defendants with violation of 18 U.S.C. §§1014 and 2.

Griffin relies upon the following points for reversal:

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1. Griffin was sentenced to fifteen months imprisonment on each count, to be served concurrently, and was fined $10,000 on Count I, $5,000 on Count II and $5,000 on Count V. Chambers was sentenced to fifteen months imprisonment on each of Counts I and III, to be served concurrently, and was fined $5,000 on Count I and $2,500 on Count III.

I. Prejudicial conduct of the Assistant United States Attorney in reading in part of his opening statement written statements given to Government investigators.

II. Failure to dismiss Count II as defective.

III. Failure to dismiss Count V.

IV. Error in admitting evidence of repurchase of 2,880 acres.

V. Error in admitting evidence of other transactions.

VI. Error in permitting Boggess to testify.

VII. Failure to produce *Brady* material and denial of admission of certain minutes of Lonoke PCA.

Chambers makes the same contention with respect to Count III as Griffin does with respect to Count II. He also relies upon points I, III, IV, V, VI and VII asserted by Griffin. Such errors will be discussed jointly with respect to both appeals.

Chambers urges the following additional points:

VIII. Refusal to grant a severance.

IX. Error in instructions.

For the reasons hereinafter stated, we reject each of the contentions made and affirm the convictions.

The trial was a long one. The record is very extensive. A complete analysis of the facts and issues would unduly extend this opinion without serving a significant useful purpose. We shall summarize some of the pertinent facts bearing upon the issues raised. There is a dispute as to some of the material facts. However, in light of the jury verdict in favor of the Government, we view the evidence in the light most favorable to the Government as the prevailing party, and the facts are stated with this principle in mind. The Lonoke Production Credit Association (PCA) is a federally-chartered instrumentality of the United States under the supervision of the Federal Intermediate Credit Bank of St. Louis, Missouri, and the Farm Credit Administration. Griffin was president and Chambers was vice president of Lonoke PCA. Hansell was manager of the East Lonoke branch.

In 1973 Huntsman, a large farm operator, contacted Griffin in an effort to secure financing for his farming operations. Huntsman was told by Griffin that Hansell would take care of his needs. Huntsman was unsuccessful in obtaining 1973 crops loans and had no success with this 1974 application. He was told St. Louis was fussing about Huntsman's not having sufficient farming operations in the Association's territory.

In July 1974 Hansell visited Huntsman and suggested the purchase of a 2,880 acre tract of land

which Hansell said would make it easier for the PCA to give him his desired line of credit. Hansell said Griffin was waiting for a call to him of Huntsman's decision on the purchase and that PCA could finance 100% of the purchase price. Huntsman, with some reluctance, agreed to buy the land. A loan application for $513,800 was prepared and was signed by Huntsman. The application states the loan is a crop loan. The loan application was approved by the PCA loan committee of which Griffin was an influential member.[2]

The involved 2,880 acre farm was purchased by Griffin, Chambers and Hansell for $470,000 in late July of 1974 with title taken in the name of O. M. Young, Trustee.[3] The Brauer land was encumbered by existing encumbrances of $341,680 which were assumed by the purchasers with a balance of $129,000 to be paid in cash at the time of closing. Huntsman's purchase price was $634,000, or $164,000 more than Brauer's selling price. The beneficial ownership of the land was not disclosed to Huntsman or to the supervising Government agencies.

On July 24, 1974, the PCA disbursed the proceeds of the crop loan, paying $121,433 for the release of a

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2.
Real estate loans could be made by the PCA but the procedures for such loans differed significantly from those with respect to crop loans. Appraisals and title examinations were required for real estate loans.

3.
It is not clear from the record whether defendants committed themselves to purchase the Brauer land prior to obtaining Huntsman's purchase agreement.

bank crop lien and issuing a check to Huntsman for $386,600.

Hansell refused to deliver the check for the loan proceeds to Huntsman, and at Hansell's insistence, Hansell and Huntsman went to the First National Bank in Little Rock where at Hansell's direction Huntsman endorsed and deposited the check for $386,600 and received a cashier's check made out to Young, Trustee, for $292,319.18, which was the amount due on the purchase above the assumption of existing encumbrances on the land. Hansell took possession of such check and delivered it to Young. The check was deposited to Young's trust account. Shortly thereafter Young issued a check on the trust account for $20,000 to Chambers and checks for $71,000 each to Griffin and Hansell. The remaining $2,000 was retained by Young as a fee. Telephone records were received in evidence showing numerous phone calls between Griffin and Young and others interested in the transaction on July 24 and that Young had a telephone conversation with Chambers on that date. Huntsman, after the payments hereinabove referred to, received a balance of about $80,000 to be used for crop loan purposes and had difficulty in meeting the expenses of his farming operation. Huntsman in August 1974 received an additional crop loan of $125,000, and repeated efforts to obtain additional financing were unsuccessful.

On December 1, 1974, a payment on the indebtedness assumed by Huntsman became due. At the time of the purchase by Huntsman neither Brauer nor

Huntsman knew that a $164,000 profit had been made on the sale, and Huntsman was not aware of the fact that defendants were the equitable owners of the real estate at such time. On March 7, 1975, Huntsman learned of the true ownership of the land which he purchased and the profit that had been made. The following day Huntsman visited Hansell and threatened to report the violation by the defendants of the conflict of interest statute and regulation. Hansell admitted that a profit had been made on the deal and that it was unlawful for the PCA officers to do what they had done, urged Huntsman not to go to the FBI, and stated that he would comply with anything Huntsman asked. Shortly thereafter a meeting was held between Hansell, Huntsman and Boggess wherein Boggess agreed to buy the farm for $662,000, which was approximately Huntsman's purchase price. Boggess brought Huntsman an option agreement and a $25,000 check drawn on the account of O. M. Young. On March 25, 1975, the purchase of the farm was completed with Boggess paying Huntsman and the PCA $302,000, which was credited on Huntsman's debt to PCA. The balance of the repurchase was the assumption of the existing mortgage indebtedness.

The Huntsman-Boggess closing took place in Young's office with Chambers, Young, Boggess and Huntsman and his attorney being present. It is established that Griffin, Chambers and Hansell put up the money for the Boggess purchase and induced Boggess to give a false statement to Government investigators with respect to his involvement in the purchase. The PCA loan was paid in full, and no money

was lost by PCA as a result of the Huntsman loan. Additional facts to the extent necessary will be set out in the course of the opinion.

We shall now consider the asserted errors in the order hereinabove stated.

I.

Defendants urge that the Assistant United States Attorney engaged in improper conduct during opening argument when he read portions of the signed statement of each defendant to the jury upon the basis that any conspiracy which might have existed was terminated prior to the giving of the statements to the Government investigators and that consequently the statements were inadmissible to the extent that they involved defendants other than the defendant making the statement. At that point no motions had been made to suppress the statements. The statements had been furnished defendants as part of the discovery procedure. No objection was made at the time the statements were read nor was a motion for mistrial on that ground made. Such failure precludes raising the claimed error upon appeal. *See United States v. Lawson*, 483 F.2d 535, 538 (8th Cir. 1973); *United States v. DeRosa*, 548 F.2d 464, 471-72 (3d Cir. 1977). Moreover, Griffin's attorney in opening statement admitted nearly all of the facts referred to in Griffin's statement concerning the purchase and sale of the farm but denied criminal intent. The statement of each defendant admitted the receipt of profits in the substantial amounts shown in the Young disbursements hereinabove.

Before defendants' statements were admitted in evidence all references to codefendants were deleted, and the jury was advised that statements of counsel did not constitute evidence. We are satisfied that no prejudicial error was committed with respect to the attorney's opening statement. *See United States v. Powell*, 564 F.2d 256, 259-60 (8th Cir. 1977); *United States v. Killian*, 524 F.2d 1268, 1273-75 (5th Cir. 1975).

II.

The contention of defendants that the allegations of Count II of the indictment as to Griffin and Count III as to Chambers, charging violation of 18 U.S.C. §1006, are fatally defective lacks merit. Four elements are required to be proved in order to establish a violation of Title 18 U.S.C. §1006. They are: (1) that the defendant is an officer or employee of a lending institution organized under the laws of the United States; (2) that the defendant participated, shared in or received, either directly or indirectly, money, profit or benefit by and through any transaction of such institution; (3) that the defendant did such act or acts with intent to defraud the association; and (4) that such act or acts were done knowingly and willfully. *United States v. Hykel*, 461 F.2d 721 (3d Cir. 1972).

Counts II and III of the indictment tell the appellants exactly what they were supposed to have fraudulently received, and the exact transaction involved, *i.e.*, the disbursement of an Association check in the amount of $386,600 payable to Harold and Maudie

Huntsman which purportedly represented the proceeds of a Huntsman crop loan.

In *United States v. Brown*, 540 F.2d 364, 371 (8th Cir. 1976), we held:

> An indictment must set forth in factual terms the elements of the offense sought to be charged. It must sufficiently apprise the defendant of what he must be prepared to meet, and its generality must not endanger his constitutional guarantee against double jeopardy. (Supporting citations omitted.)

The record in our present case clearly reflects that the defendants were fully aware of the charges against them and that their double jeopardy rights are fully protected.

III.

Both Griffin and Chambers urge that the court erred in denying their timely motions for acquittal on Count V. This count alleges that the defendants knowingly and willfully violated 18 U.S.C. §§1014 and 2 in that they caused Huntsman to make a false statement that the loan applied for was a crop loan when in fact they knew that a major portion of the loan was to be used to purchase the 2,880 acres, and that they thereafter approved the loan, or that they aided and abetted in such transaction. Our examination of the record satisfies us that there is substantial evidence to support the charge. Griffin was convicted on Count V.

Chambers was acquitted on Count V. The case against Griffin, who was a member of the committee that approved the loan, is stronger than that against Chambers.

Chambers further contends that the refusal to dismiss Count V permitted the reception of evidence that would have been excluded if the dismissal motion had been granted.

We hold that the court committed no error in submitting Count V to the jury.

IV.

The court committed no error in admitting buy-back evidence relating to the 2,880 acres with respect to Counts II and III. Admission of evidence is committed to the broad discretion of the trial court and the trial judge's ruling should not be disturbed absent a clear showing of abuse of discretion. *United States v. Baumgarten*, 517 F.2d 1020, 1029 (8th Cir. 1975). The buy-back evidence was relevant and material on the issue of knowledge and intent with respect to Counts II and III. See Rules 401-402, Federal Rules of Evidence. The court by proper instruction limited consideration of the buy-back evidence to Counts II and III. Accordingly, we need not reach the Government's contention that the evidence was admissible as to Count I.

V.

Defendants challenge the admission of evidence concerning other similar transactions. Rule 404(b). Federal Rules of Evidence, provides:

> Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

This court in *United States v. Maestas*, 554 F.2d 834, 836 (8th Cir. 1977), held:

> Our task is to assess the relevancy and the probative value of the challenged evidence; if it meets the requirements of Rule 404(b) we may not reverse the ruling of the District Court unless we also find that the prejudice from admitting the evidence substantially outweighed its probative value. In making that evaluation, we give great deference to the district judge, who saw and heard the evidence.

The record reflects that the trial court held three hearings on the admissibility of the other transactions evidence and was advised, as was defense counsel, of the general facts surrounding each transaction. The defense had several months to meet the proposed evidence. The court limited the prosecution to similar transactions which involved land deals in which Griffin and Chambers were involved, where loan proceeds were used in whole

or in part to buy land in which Griffin and Chambers had an interest and where deception and concealment were involved. Our examination of the record satisfies us that the trial court did not abuse its discretion in admitting the challenged evidence.

VI.

Boggess was a straw man used by the defendants to repurchase the 2,880 acres from Huntsman. Boggess had refused to testify before the grand jury on the basis of self-incrimination. He was ultimately granted immunity by appropriate proceedings. Defendants contend Boggess should not be allowed to testify since he had attended several meetings of defendants with their counsel. At such time Boggess was represented by the same attorney who represented Hansell and he attended the meetings at the attorney's request. The court, upon the basis of substantial evidence at an in camera evidentiary hearing, found Boggess was not a Government informer or spy and that he did not disclose any defense strategy to the Government. Both Boggess and the Government specifically denied any disclosure of defense strategy to the Government.

Defendants further complain that they did not learn of the grant of immunity until the fifth day of the trial and that such information should have been disclosed earlier in order to enable defendants to propose questions on voir dire as to whether they would consider the granting of immunity in determining the credibility of a witness. We find such contention lacks

merit. Defendants knew for a considerable time that Boggess had been subpoenaed by the Government as a witness. Defendants had an opportunity to argue to the jury the bearing of the immunity on Boggess' credibility. Boggess' testimony was very damaging to the defendants. He stated that he had had several conferences with Griffin, Chambers and Hansell and that he was their friend. He said that he acted as purchaser at defendants' request and that all the money for the repurchase was provided by the defendants. We disagree with defendants' contention that Boggess' testimony, which was admitted only with respect to Counts II and III, had no relevancy to such charges. We also disagree with the claim that the relevancy is substantially outweighed by danger of unfair prejudice.

VII.

Defendants at several stages filed motions for disclosure of material favorable to the defense. The claimed favorable material is contained in the PCA minute book and reads as follows:

> Gentlemen, Mr. McGuire explained that an FCA investigation team had discovered that violations of FCA rules and regulations apparently have been committed and that the employment of Charles Griffin and Bill Hansell had been terminated. He was direct, emphatic and explicit that criminal violations were not involved.

Mr. McGuire was the president of the Federal Intermediate Credit Bank of St. Louis. The record

reflects that neither the Government nor its investigators had possession or knowledge of such minutes and that they were discovered when the minute books were produced on the fifth day of the trial. The minutes disclose information unfavorable to the defendants in that Griffin had been discharged for violation of association rules. The favorable portion of the minutes was that McGuire expressed the bald assertion that criminal violation was not involved. The tender of the quoted minutes was denied upon the ground that it constituted an inadmissible conclusion of the witness. It is doubtful whether the expression of an expert opinion on guilt or innocence can be given by a witness. Such issue is appropriately determined by the jury under appropriate instructions by the court.

In any event, the statement was made some three months before the indictment. McGuire was not shown to be in possession of all the facts nor was he shown to be an expert qualified to pass on the criminal guilt issue. The court committed no error in determining that there was no *Brady* violation and did not abuse its discretion in refusing to admit the tendered extract from the minutes. The trial continued for nine days after the defendants' knowledge of the minutes and a four-day recess intervened. The court properly denied a continuance as ample time remained for the defendants to make any desired investigation as to the subject matter of the minutes.

VIII.

Chambers complains of the court's denial of a severance. Chambers participated in the same transactions as his codefendants. Joinder was proper under Rule 8(b), Federal Rules of Criminal Procedure. In *United States v. King* and *United States v. Lewis*, 567 F.2d 785, 788 (8th Cir. 1977), we held no abuse of discretion arose from the denial of Lewis' motion for severance. We stated:

> Even if joinder is proper under Rule 8, Fed.R.Crim.P. 14 authorizes the trial court to grant relief from joinder "[i]f it appears that a defendant or the government is prejudiced by [the] joinder ..." The court "may order ... separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires." *See United States v. Sanders*, 563 F.2d 379, at 382 (8th Cir. 1977). A district court in determining whether to grant relief under Rule 14 has wide discretion and the court's ruling is rarely disturbed on review.

We find no abuse of discretion on the part of the trial court in denying Chambers' motion for severance.

IX.

Chambers contends the court's instructions on intent to defraud the association are inadequate and erroneous. Chambers also contends the court erred in refusing to instruct on his theory of defense. We have reviewed the Court's instructions on intent to defraud as

whole and find no prejudicial error was committed. As stated in *United States v. Hykel*, 461 F.2d 721, 724 (3d Cir. 1972), quoting with approval from *Beaudine v. United States*, 368 F.2d 417 (5th Cir. 1966):

> [T]his part of 18 U.S.C. §1006: "is intended to do much more than forbid unsophisticated embezzlement, larceny or theft. And that part of the statute with which we are concerned is a typical conflict of interests prohibition. As such it is a congressional recognition of the principle so well grounded in morality and equity that the servant cannot serve two masters and that when this is done without complete disclosure, the law considers that the master-principal's interests either will, or are apt to, suffer."

Chambers complains of that part of the instructions which states that the evidence need not show that the PCA suffered any financial loss and that a showing that the accused acted with intent to defraud is sufficient. The Government suffered no financial loss as the loan was repaid. As stated in *Hykel, supra* at 725:

> The fact that Havertown and the United States may have suffered no loss through the transaction does not preclude a finding of intent to defraud.

The court's instructions in the present case clearly place the burden on the Government to show an intent to defraud beyond a reasonable doubt. Defendants had signed statements that they were familiar with the applicable regulations relating to conflict of interest. The evidence here clearly shows a

conflict of interest and supports a finding of intent to defraud a Government agency by not revealing the conflicting interests to the supervising agencies. Defendant's contention that the court erred in failing to submit this theory of the case lacks merit. The tendered defense that Chambers is a licensed real estate agent and that the $20,000 received on the sale was a commission finds no support in the evidence. The evidence reflects that the sale was negotiated by Hansell and that Chambers had nothing to do with the selling except to acquiesce in the sale and accept his share of the profits.

The extensive record developed at a lengthy trial and the numerous errors asserted make it impractical to discuss all facts and issues in greater detail. No useful purpose would be accomplished by a more detailed discussion of the facts and issues. We have fully considered all of defendants' contentions including those not discussed and are convinced that the defendants had a fair trial, that substantial evidence supports the jury verdicts, and that no prejudicial error was committed by the trial court nor did it abuse its discretion upon issues lying within its discretion.

The convictions are affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX 2

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

77-1597 September Term, 1977

United States of America,)
)
Appellee,)
)
vs.)
)
Charles Thomas Griffin,)
)
Appellant.)

Appeals from the
United States District
Court for the Eastern
District of Arkansas

77-1601

United States of America,)
)
Appellee,)
)
vs.)
)
Joe Henry Chambers,)
)
Appellant.)

The Court having considered petitions for rehearing en banc filed by counsel for appellants and,

being fully advised in the premises, it is ordered that the petitions for rehearing en banc be, and they are hereby, denied.

Considering the petitions for rehearing en banc as petitions for rehearing, it is ordered that the petitions for rehearing also be, and they are hereby, denied.

July 28, 1978

APPENDIX 3

18 USCA 2: Principals

"(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

18 USCA 371: Conspiracy to commit offense or to defraud United States

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

18 USCA 1006: Federal credit institution entries, reports and transactions

"Whoever, being an officer, agent or employee of or connected in any capacity with the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, National Credit Union Administration, Home Owners' Loan Corporation, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, or any land bank, intermediate credit bank, bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or by the Administrator of the National Credit Union Administration, or any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or

association, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

18 USCA 1014: Loan and credit applications generally; renewals and discounts; crop insurance

"Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Reconstruction Finance Corporation, Farm Credit Administration, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, any Federal intermediate credit bank, or any division, officer, or employee thereof, or of any corporation organized under section 1131 — 1134m of Title 12, or of any regional agricultural credit corporation established pursuant to law, or of the National Agricultural Credit Corporation, a Federal Home Loan Bank, the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, a Federal Savings and Loan Association, a Federal land bank, a joint-stock land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, any bank the deposits of which are insured by the Federal Deposit Insurance Corporation, any member of the Federal Home Loan Bank System, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the Administrator of the National Credit Union Administration, upon any application, advance,

discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $5,000 or imprisoned not more than two years, or both."

APPENDIX 4

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
NOV. 1, 1976

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

United States of America)	
	) No. LR-76-CR-154
v.	)
	) Count I-18 U.S.C. §371
Charles Thomas Griffin	) (NMT $10,000; NMT 5 yrs.,
Joe Henry Chambers	) or both)
Bill Hansell	) Counts II, III and IV -
	) 18 U.S.C. §1006
	) (NMT $10,000; NMT 5 yrs.,
	) or both)
	) Count V - 18 U.S.C. §1014
	) (NMT $5,000; 2 yrs.,
	) or both)

INDICTMENT

THE GRAND JURY CHARGES:

COUNT I

I. At all times material to this indictment:

a. The Lonoke Production Credit Association (PCA) was a federally chartered instrumentality of the United States with its central office located in Lonoke, Arkansas, under the supervision of the Federal Intermediate Credit Bank of St. Louis, St. Louis, Missouri and the Farm Credit Administration (FCA), also instrumentalities of the United States.

b. The East Lonoke Branch of the Lonoke PCA was located in Lonoke, Arkansas; its Branch Office Manager being BILL HANSELL, the defendant.

c. CHARLES THOMAS GRIFFIN, the defendant, was the President and a member of the Executive Committee of the Lonoke PCA.

d. JOE HENRY CHAMBERS, the defendant, was the Vice President of the Lonoke PCA.

e. O. M. Young was an attorney acting as trustee for the defendants.

f. Irving Brauer owned a 2,880 acre farm in Independence County, Arkansas.

g. Harold V. Huntsman was a borrower and member of the Lonoke PCA.

II. That from on or about the 1st day of June, 1974, and continuously thereafter up to and including the date of the return of this indictment, in the Eastern District of Arkansas and elsewhere, CHARLES

THOMAS GRIFFIN, JOE HENRY CHAMBERS and BILL HANSELL the defendants, wilfully and knowingly did combine, conspire, confederate and agree together with each other and with diverse other persons known and unknown to the Grand Jury to commit the following offense against the United States of America, to-wit: to wilfully and unlawfully participate, share in and directly and indirectly receive monies, profits and benefits from a purported crop loan, being officers and employees of the Lonoke Production Credit Association, a federally chartered body corporate and instrumentality of the United States of America under the supervision of the Federal Intermediate Credit Bank of St. Louis, St. Louis, Missouri and the Farm Credit Administration, with intent to defraud said Association, in violation of Title 18, United States Code, Section 1006.

III. It was a part of said conspiracy that the defendants would cause Harold V. Huntsman to make a loan application to the Lonoke PCA in which false statements concerning the purpose of the loan were made.

IV. It was further part of said conspiracy that the defendants would cause a specified 2,880 acre farm in Independence County, Arkansas to be transferred from Irving Brauer to O. M. Young, acting as trustee for the defendants.

V. It was further part of said conspiracy that the defendants would cause Harold V. Huntsman's loan application to be approved by the Executive Committee

of the Lonoke PCA only after agreement by Harold V. Huntsman to buy the said 2,880 acre farm in Independence County, Arkansas.

VI. It was further part of said conspiracy that the defendants would cause PCA loan proceeds to be advanced to Harold V. Huntsman.

VII. It was further part of said conspiracy that the defendants would cause Harold V. Huntsman to use part of the PCA loan proceeds to purchase the said 2,880 acre farm in Independence County, Arkansas, from O. M. Young, trustee.

VIII. It was further part of said conspiracy that the defendants would cause O. M. Young, trustee, to issue checks to each defendant drawn on an escrow account containing the PCA loan proceeds.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants performed the following overt acts:

1. On or about the 16th day of July, 1974, in the Eastern District of Arkansas, the defendant BILL HANSELL, in his capacity as Branch Manager of the Lonoke Production Credit Association, took an application from Harold V. Huntsman for a $513,800 crop loan.

2. On or about the 18th day of July, 1974, in the Eastern District of Arkansas, the defendant CHARLES THOMAS GRIFFIN, in his capacity as President and voting member of the Lonoke Production Credit Association Executive Committee, approved the aforementioned crop loan.

3. On or about the 24th day of July, 1974, in the Eastern District of Arkansas, the defendant BILL HANSELL, in his capacity as Branch Manager of the Lonoke Production Credit Association, issued an Association check in the amount of $386,600, payable to Harold V. Huntsman and Maudie Huntsman.

4. On or about the 24th day of July, 1974, in the Eastern District of Arkansas, the defendant BILL HANSELL accompanied Harold V. Huntsman to the First National Bank in Little Rock, Little Rock, Arkansas.

5. From on or about the 26th day of July, 1974 to on or about the 30th day of July, 1974, in the Eastern District of Arkansas, the defendant JOE HENRY CHAMBERS accepted a $20,000 check dated the 26th day of July 1974, drawn on the escrow account of O. M. Young, attorney.

6. From on or about the 26th day of July, 1974 to on or about the 30th day of July, 1974, in the Eastern District of Arkansas, the defendant CHARLES THOMAS GRIFFIN, accepted a $71,000 check dated the 26th day of July, 1974, drawn on the escrow account of O. M. Young, attorney.

7. From on or about the 26th day of July, 1974, to on or about the 30th day of July, 1974, in the Eastern District of Arkansas, the defendant BILL HANSELL accepted a $71,000 check dated the 26th day of July, 1974, drawn on the escrow account of O. M. Young, attorney.

All of the above in violation of Title 18, United States Code, Section 371.

COUNT II

I. The Grand Jury realleges the allegations contained in paragraph I of Count I.

II. That on or about the 26th day of July, 1974, in the Eastern District of Arkansas, CHARLES THOMAS GRIFFIN, being President of the Lonoke Production Credit Association, a federally chartered body corporate and instrumentality of the United States of America, under the supervision of the Federal Intermediate Credit Bank (FICB) of St. Louis, St. Louis, Missouri, and the Farm Credit Administration, with intent to defraud said Association, did participate, share in and directly and indirectly receive monies, profits and benefits, that is the sum of $71,000 by means of and through the disbursement by the said Association of its check No. 60491, in the amount of $386,600, payable to Harold V. Huntsman and Maudie Huntsman, dated the 24th day of July, 1974, and purportedly representing proceeds of crop loan to Harold V. Huntsman and Maudie Huntsman, thereby violating the provisions of Title 18, United States Code, Section 1006.

COUNT III

I. The Grand Jury realleges the allegations contained in paragraph I of Count I.

II. That on or about the 26th day of July, 1974, in the Eastern District of Arkansas, JOE HENRY CHAMBERS, being Vice President of the Lonoke Production Credit Association, a federally chartered body corporate and instrumentality of the United States of America under the supervision of the Federal Intermediate Credit Bank (FICB) of St. Louis, St. Louis, Missouri and the Farm Credit Administration with intent to defraud said Association did participate, share in and directly and indirectly receive monies, profits and benefits, that is the sum of $20,000 by means of and through the disbursement by the said Association of its check No. 60491, in the amount of $386,600, payable to Harold V. Huntsman and Maudie Huntsman, dated the 24th day of July, 1974, and purportedly representing proceeds of crop loan to Harold V. Huntsman and Maudie Huntsman, thereby violating the provisions of Title 18, United States Code, Section 1006.

COUNT IV

I. The Grand Jury realleges the allegations contained in paragraph I of Count I.

II. That on or about the 26th day of July, 1974, in the Eastern District of Arkansas, BILL HANSELL,

being Branch Manager of the Lonoke Production Credit Association, a federally chartered body corporate and instrumentality of the United States of America under the supervision of the Federal Intermediate Credit Bank of St. Louis, St. Louis, Missouri and the Farm Credit Administration, with intent to defraud said Association did participate, share in and directly and indirectly receive monies, profits and benefits, that is the sum of $71,000 by means of and through the disbursement by the said Association of its check No. 60491, in the amount of $386,600, payable to Harold V. Huntsman and Maudie Huntsman, dated the 24th day of July, 1974, and purportedly representing proceeds of crop loan to Harold V. Huntsman and Maudie Huntsman, thereby violating the provision of Title 18, United States Code, Section 1006.

COUNT V

I. The Grand Jury realleges the allegations contained in paragraph I of Count I.

II. That on or about the 16th day of July, 1974, in the Eastern District of Arkansas, CHARLES THOMAS GRIFFIN, JOE HENRY CHAMBERS and BILL HANSELL knowingly and wilfully did cause to be made a false statement in an application for a loan submitted by Harold V. Huntsman and Maudie Huntsman on said date to the Lonoke Production Credit Association, a federally chartered body corporate and instrumentality of the United States of America under the supervision of the Federal Intermediate Credit Bank

of St. Louis, St. Louis, Missouri and the Farm Credit Administration, for the purpose of influencing the action of said Association to approve said loan, in that the defendants caused to be stated and represented in said application that request was being made by Harold V. Huntsman and Maudie Huntsman for a crop loan in the amount of $513,800, whereas, in truth and fact, as the defendants then and there well knew, $292,319.18 was to be used to purchase 2,880 acres of real property in Independence County, Arkansas, thereby violating the provisions of Title 18, United States Code, Section 1014 and 2.

A TRUE BILL.

_____

FOREMAN

W. H. DILLAHUNTY
United States Attorney

SAMUEL A. PERRONI
Assistant United States Attorney